

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
Western Division

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|--|---|-----------------------|
| BRANDON SIMON and LAINEY | : | Case No. 1:18-cv-458 |
| HOLLINGSWORTH, individually and | : | |
| on behalf of those similarly situated, | : | J. Dlott |
| | : | M.J. Litkovitz |
| Plaintiffs, | : | |
| | : | |
| v. | : | |
| | : | |
| KEVIN J. ISON DMD PSC, d/b/a | : | |
| ORTHODONTIC SPECIALISTS | : | |
| | : | |
| and | : | |
| | : | |
| GID ORTHODONTICS LLC, d/b/a | : | |
| ORTHODONTICS SPECIALISTS | : | |
| | : | |
| and | : | |
| | : | |
| DR. KEVIN J. ISON, DMD, MS, | : | |
| | : | |
| Defendants. | : | |

***Proposed* PRELIMINARY APPROVAL ORDER**

This matter comes before the Court on Plaintiffs' and Defendants' Joint Motion for Preliminary Certification of Settlement Class and Approval of Settlement Agreement. For the reasons that follow, the Court GRANTS the parties' Joint Motion for Preliminary Certification of Settlement Class and preliminarily APPROVES the parties' Settlement Agreement.

IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, and all terms defined herein shall have the same meaning as set forth in the Settlement Agreement.

2. The Settlement Agreement is hereby preliminarily **APPROVED** as appearing on its face to be fair, reasonable, and adequate and to have been the product of serious, informed, and extensive arm's-length negotiations between the Representative Plaintiffs and Kevin J. Ison, DMS PSC, d/b/a Orthodontics Specialists, GID Orthodontics, LLC, d/b/a Orthodontics Specialists, and Dr. Kevin J. Ison, DMD, MS (collectively, "Defendants") (collectively, with the Representative Plaintiff, the "Parties"). In making this finding, the Court considered the nature of the claims, the relative strength of the Representative Plaintiffs' claims, the amounts and kinds of benefits to be paid if the settlement is approved after notice to the Settlement Class, the allocation of settlement proceeds among the Class Members, and the fact that a settlement represents a compromise of the Parties' respective positions rather than the result of a finding of liability at trial. Accordingly, the Court preliminarily finds that the Settlement Agreement was entered into in good faith.

3. The Court finds preliminarily, and for purposes of proceeding pursuant to the Federal Rule of Civil Procedure 23, for settlement purposes only and on approval of the Settlement Agreement only, that the number of Class Members is sufficiently numerous, the Class Members are ascertainable based on the Defendants' records, there are questions of law and fact common to the claims of the Class Members, the Representative Plaintiffs' claims are typical of those in the class and that there is adequate and fair representation by the Representative Plaintiffs and Class Counsel.

4. Accordingly, for purposes of this Settlement only, the Court hereby certifies the following Settlement Class: All persons who worked as hourly and non-exempt employees for Defendants, and who worked in excess of 40 hours in any workweek, and who were not paid one and one-half times their regular rate of pay for the hours worked in excess of 40 in any such workweek but excludes all individuals who timely opt out of the Settlement. Members of the

Settlement Class who do not exclude themselves from the Class Action are referred to as Participating Settlement Class Members.

5. The Court **HEREBY APPOINTS** Finney Law Firm LLC as Class Counsel for purposes of this Settlement.

6. The Court **HEREBY APPOINTS** Plaintiffs Lainey Hollingsworth and Brandon Simon as the Representative Plaintiffs of the Settlement Class for settlement purposes only.

7. The Court **HEREBY APPROVES** Finney Law Firm LLC as Claims Administrator for purpose of this Settlement.

8. A hearing (the "Settlement Fairness Hearing") is hereby **SCHEDULED** to be held before the Court on JANUARY 15, 2020 at 10:00 am/pm at the United States District Court for the Southern District of Ohio, 100 East Fifth Street, Cincinnati, Ohio 45202. In accordance with Federal Rule of Civil Procedure 23(e), the Settlement Fairness Hearing is scheduled to determine whether final approval should be given to the Settlement Agreement.

9. The form of the Class Notice appended to the Settlement Agreement in Exhibit 1 is hereby **APPROVED** and will be sent out pursuant to the terms of the Settlement Agreement.

10. Defendants shall provide to Class Counsel acting as Claims Administrator, an electronic database containing name, address, Social Security Number, of each Settlement Class Member, as well as the weeks each worked during the applicable period, in a format and with sufficient time so that Class Counsel can prepare and timely send the Class Notice. Class Counsel shall maintain the data as private and confidential.

11. The Court finds that the Class Notices constitutes the best notice practicable under the circumstances and is in full compliance with Rule 23 of the Federal Rules of Civil Procedure, the laws of the United States Constitution, and the requirements of due process. The Court further finds that the Class Notices fully and accurately inform the Settlement Class Members of

all material elements of the proposed settlement, of the Settlement Class Members' right to be excluded from the Class, and of each Class Member's right and opportunity to object to the settlement.

12. The Court hereby **APPROVES** the proposed procedure for opting out of the Class as set forth in the Settlement Agreement and Class Notice.

13. All reasonable costs of settlement and claims administration, including the mailing of Class Notice, shall be paid for as provided in the Settlement Agreement.

14. Plaintiffs shall file motions for final approval of the settlement agreement and requests for attorney fees, costs, and awards, and for class representative fees no later than 14 days before the Settlement Fairness Hearing.

15. It is further ordered that pending further order of this Court, all proceedings in this matter except those contemplated herein and as part of the settlement are stayed.

16. Jurisdiction is hereby retained over this Class Action and the Parties to the Class Action, and each of the Settlement Class Members, for all matters relating to this Class Action, the Settlement Agreement, including (without limitation) all matters relating to the administration, interpretation, effectuation, and/or enforcement of the Settlement Agreement and this Order.

SO ORDERED.

Date: 10/30/19

Karen L. Litkovitz
M.J. Karen L. Litkovitz